

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Joint Application of)
STi Prepaid, LLC and Dialaround)
Enterprises Inc.)
For Approval of Transfer of Assets and)
Certificate of Authority to Provide)
Intrastate Telecommunications Services)
and Approval of Termination of Service)

DOCKET NO. 2007-0058

ORDER NO. 24236

Filed May 20, 2008
At 11:30 o'clock A.M.

Karin Higzel.
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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ORDER

By this Order, the commission: (1) denies the request of DIALAROUND ENTERPRISES INC. ("DEI") for an extension of time to surrender its Certificate of Authority ("COA") to provide intrastate telecommunications services; and (2) *sua sponte* grants DEI an enlargement of time until June 15, 2008 to comply with Decision and Order No. 23832, filed on November 14, 2007 ("Decision and Order No. 23832").

I.

Procedural History

By Decision and Order No. 23832, the commission granted DEI and STI PREPAID, LLC's ("STi") (collectively, the "Parties") application for commission approval to participate in certain financing arrangements. In so doing, the commission: (1) granted STi a COA to provide resold intrastate telecommunication services in the State of Hawaii pursuant to Hawaii Revised Statutes ("HRS") § 269-7.5, Hawaii Administrative Rules ("HAR")

§§ 6-80-17, and 6-80-18; (2) approved the transfer of assets from DEI to STi, waived HRS § 269-19, and HAR § 6-61-105 to the extent applicable; 3) instructed DEI to surrender its COA pursuant to HAR § 6-80-123; and 4) accepted STi's initial tariff, subject to certain conditions. The commission also instructed the Parties that after DEI had surrendered its COA and assuming that a proper change of name was filed with the Department of Commerce and Consumer Affairs, subsequently, STi could request to operate under the name of DEI.

On December 4, 2007, STi filed its revised initial tariff.¹ On December 11, 2007, DEI submitted a letter request seeking an extension of time of 120 days to surrender its COA.² The request for extension was based on DEI's desire to retain its authority until the close of the transaction which would not occur until DEI and STi had obtained approvals in multiple other states; they stated, "DEI hopes to have approval from [the final outstanding state] by March 2008."³

On December 13, 2007, DEI requested an extension of time of ninety days in which to submit its 2007 annual financial report pursuant to Decision and Order No. 23832.⁴ The reason for the extension request was the same as in the December 11, 2007

¹DEI's letter to the commission, filed December 6, 2007.

²DEI's letter to the commission, filed December 12, 2007.

³DEI's letter to the commission, filed December 12, 2007.

⁴DEI's letter to the commission, filed December 17, 2007.

letter.⁵ On December 24, 2007, the commission, via letter, granted DEI's requests to enlarge time from December 14, 2007 to April 11, 2008 to surrender its COA and an enlargement of time from December 14, 2007 to March 13, 2008 to submit its 2007 annual financial report. By letter filed on April 22, 2008, DEI requested a second extension of time until June 15, 2008 to surrender its COA.⁶ The commission will treat this third letter request as a motion for enlargement of time ("Motion") under HAR §§ 6-61-23 and 6-61-41.

II.

Discussion

A.

Motion for Enlargement of Time

HAR § 6-61-23(a)(2) states that the commission, upon a motion made after the expiration of a specified period, may, at its discretion, enlarge the period in which to act "where the failure to act was the result of excusable neglect." Thus, because the commission received DEI's Motion after the specified period, i.e. after April 11, 2008, the commission must first determine whether DEI's failure to act within the required time constitutes excusable neglect.

⁵DEI's Letter to the commission, filed December 17, 2007.

⁶DEI's letter to the commission, filed April 22, 2008.

The excusable neglect standard is a strict standard requiring a showing that the failure to timely file with the commission was due to circumstances beyond a movant's control.⁷ In the instant proceeding, DEI does not provide any explanation or basis as to why its Motion was tardy. Upon review, the commission finds that there is no justification constituting excusable neglect pursuant to HAR § 6-61-23; therefore, the commission denies DEI's Motion.

⁷See Hall v. Hall, 95 Hawai'i 318, 320, 22 P.3d 965, 967 (Haw. 2001); and Enos v. Pacific Transfer & Warehouse, Inc., 80 Hawai'i 345, 350, 910 P.2d 116, 121 (Haw. 1996) (noting that the excusable neglect standard is a "strict standard, requiring a showing that the failure to timely file a notice of appeal was due to circumstances beyond the appellant's control"). See also In re Aikane Interpacific Corporation, dba Maikai Ohana Tours, Docket No. 05-0095, Order No. 21893 (June 24, 2005) (finding that the moving party's assertion that it was delayed in securing legal representation did not rise to the level of excusable neglect); In re Hawaii Water Service Company, Inc., Docket No. 03-0275, Order No. 21059 (June 17, 2004) (finding that docket deadlines, departure of the supervising attorney, sick leave requests and scheduling commitments did not constitute excusable neglect); In re Puuwaawaa Waterworks, Inc., Docket No. 03-0369, Order No. 21021 (June 2, 2004) (finding that an underestimation of the time it takes for a mail delivery did not rise to the level of excusable neglect); In re Soltur, Inc., Docket No. 00-0063, Order No. 18114 (October 4, 2000) (denying a motion for an enlargement of time based on excusable neglect where the movants claimed that its (should this be "their" as the previous reference is to movants?) failure to act was due to the substitution of counsel); and In re Laie Water Company, Inc., Docket No. 00-0017, Order No. 17942 (August 2, 2000) (stating that ignorance of the rules governing the practice and procedure before the commission, or mistakes construing such rules, do not constitute excusable neglect).

B.

Sua Sponte Enlargement of Time

The commission sua sponte considers whether an enlargement of time is warranted under these circumstances. HAR § 6-61-1 requires that the administrative rules "shall be liberally construed to secure the just, speedy, and inexpensive determination of every proceeding."⁸

DEI states:

DEI intends to surrender its certificate upon consummation of the [transfer of assets and COA from DEI to STi ("Transaction")]. The Transaction cannot close until DEI and STi [] have received all necessary approvals to transfer assets in those states in which DEI is authorized to provide telecommunications service. DEI and STi [] have obtained such approval in all relevant states except one - Arizona. DEI hopes to have approval from Arizona by May 2008.

DEI seeks to retain its authority in all states until the close of the Transaction. DEI does not want to prematurely surrender its authority in the event the Transaction does not close. If DEI surrenders its authority at this time and the Transaction is not consummated, DEI will be required to obtain authority again, which would be administratively burdensome and costly for both DEI and the [c]ommission. Upon close of the [T]ransaction, DEI and STi [] will notify the [c]ommission of the consummation of the transaction and will at that time surrender DEI's authority in Hawaii.

DEI's letter to the commission, filed on April 22, 2008, at 1-2.

The commission finds that sufficient basis exists to justify DEI and STi's delay in completing their Transaction, and thereby preventing them from fulfilling the requirements of Decision and Order No. 23832. Upon review, the commission finds

⁸HAR § 6-61-1.

that in order to secure the just, speedy, and inexpensive resolution of this proceeding, a reasonable enlargement of time to permit DEI and STi to conclude their transaction and fulfill the directives of Decision and Order No. 23832 is warranted.

III.

Orders

THE COMMISSION ORDERS:

1. DEI's request for enlargement of time, filed on April 22, 2008, is denied due to lack of excusable neglect.
2. DEI and STi shall have until June 15, 2008, to comply with Decision and Order No. 23832, filed on November 14, 2007.


DONE at Honolulu, Hawaii MAY 20 2008.

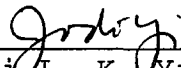
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:

By: 
Leslie H. Kondo, Commissioner


Jodi L. K. Yi
Commission Counsel

2007-0058.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 24236 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAY 20 2008